

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 09/685,197
Applicants: Timothy R. Miller et al.
Filed: October 10, 2000
TC/A.C.: 2634
Examiner: Shuwang Liu
Docket No.: XSI.012 / 10X-215
Customer No.: 23400

Confirmation No. 4309

ENTITLED: MODE CONTROLLER FOR SIGNAL ACQUISITION AND
TRACKING IN AN ULTRA WIDEBAND COMMUNICATIONS SYSTEM

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. 703-872-9306 on March 22, 2004 to the attention of Examiner Shuwang Liu of AU 2634.

Typed Name: BRIAN C. ALTMILLER

Signature: 

ELECTION OF SPECIES WITH TRAVERSAL

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In the Office Action dated February 20, 2004, the Examiner issued a requirement under 35 U.S.C. § 121 that Applicants elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. The Examiner preliminarily identified claims 1, 8, 27, 32, 35, 38, 48, 53, and 60 as being generic. The Examiner also identified Figs. 5, 9, and 11 as showing three different embodiments of the present claimed invention.

Applicants observe that in addition to claims 1, 8, 27, 32, 35, 38, 48, 53, and 60, claims 3-7, 16, 17, 20, 23, 25, 26, 28-31, 33, 34, 36, 37, 43, 45-47, 49-52, 54-59, 61, 68, 69, 72, 75, 77, 78, and 80-83 are generic to the embodiments disclosed in Figs. 5, 9, and 11. Furthermore,

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claims 70 and 71 are generic to the embodiments disclosed in Figs. 5 and 9, and claim 9 is generic to the embodiments disclosed in Figs. 5 and 11.

Applicants hereby provisionally elect to prosecute the species defined by claims 1, 3-11, 16-20, 23, 25-40, 43, 45-63, 68, 69, 70-72, 75, 77, 78, and 80-83 (as shown by way of example in Fig. 5) if no generic claims are allowed. Applicants make this election with traverse.

MPEP § 803 clearly states that "[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." This section then proceeds to note that prima facie proof of such a burden can be shown "if the examiner shows by appropriate explanation either separate classification, separate status in the art, or a different field of search as defined in MPEP § 808.02." Applicants respectfully submit that there would be no serious burden to the Examiner to make a search covering all of the recited claims.

The Examiner has identified no reason as to why the searching of the various claims would cause an undue burden. No separate classifications, status in the art, or different fields of search have been listed. In fact, differences in the implementation of a track state machine 200, 700, 900 will not place an undue searching burden on the Examiner. He will likely have to search in the same places for each of claims 1-84. It would appear that restricting the claims and requiring separate searches for the different elected claims would actually place a greater burden on the Examiner by requiring him to duplicate his search efforts.

Applicants therefore respectfully request that the Examiner withdraw the outstanding requirement for an election of species and perform a search on all of the pending claims.

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Although it is not anticipated that any additional fees are due or payable, the
Commissioner is hereby authorized to charge any fees that may be required to Deposit Account
No. 50-1147.

Respectfully Submitted,



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Reg. No. 37,271

Date: March 22, 2004

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From: Brian C. Altmiller

Company: USPTO, Art Unit 2634

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Subject: Election of Species: App. Serial No. 09/685,197
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Comments:

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